

**ORDINANCE NO. 07-49**

---

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AMENDING THE FUTURE LAND USE MAP FROM LOW DENSITY RESIDENTIAL TO COMMERCIAL. **PROPERTY LOCATED ON VACANT LAND LOCATED ON THE NORTH SIDE OF WEST 68 STREET AND EASTERLY OF THE EASTERLY RIGHT-OF-WAY LINE OF HIALEAH-HIALEAH GARDENS BOULEVARD (NW 92-97 AVENUE CONNECTOR ROAD), HIALEAH, FLORIDA, ZONED R-1 (ONE FAMILY DISTRICT); REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Planning and Zoning Board on April 4, 2007 recommended approval of the proposed amendment to the Future Land Use Map of the Hialeah, Fla., Comprehensive Plan to the Hialeah City Council; and

**WHEREAS**, the application qualifies as small scale development pursuant to section 163.3187(1)(c), Florida Statutes since the proposed amendment involves a use of 10 acres or fewer and is within the annual acreage allotted in a local government comprising either a maximum total of 80 acres or 120 acres in an area for downtown revitalization or urban infill.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The Future Land Use Map is hereby amended from Low Density Residential to Commercial on property located on vacant land on the north side of West 68 Street and easterly of the easterly right-of-way line of Hialeah-Hialeah Gardens

Boulevard (NW 92-97 Avenue Connector Road), Hialeah, Miami-Dade, Florida, zoned

R-1 (One Family District), and legally described as follows:

THAT PORTION OF THE SOUTH  $\frac{1}{2}$  OF TRACT 23 IN THE SW  $\frac{1}{4}$  OF SECTION 28, TOWNSHIP 52 SOUTH, RANGE 40 EAST, CHAMBERS LAND COMPANY SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 68, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, LYING EASTERLY OF THE EASTERLY RIGHT-OF-WAY LINE OF NW 92-97 AVENUE CONNECTOR ROAD AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 28, THE STANDARD PLANE RECTANGULAR COORDINATES FOR THE EAST ZONE OF FLORIDA FOR SAID POINT BEING X = 711739.45, Y = 563973.12; THENCE RUN NORTH  $89^{\circ} 36' 02''$  EAST MERCATOR, ALONG THE SOUTH LINE OF SAID SECTION 28 FOR A DISTANCE OF 1320.72 FEET TO THE POINT OF INTERSECTION WITH THE ARC OF A CIRCULAR CURVE CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS NORTH  $56^{\circ} 23' 10''$  WEST FROM SAID POINT OF INTERSECTION; THENCE RUN NORTHEASTERLY, ALONG THE ARC OF SAID CIRCULAR CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 1,859.86 FEET, THROUGH A CENTRAL ANGLE OF  $01^{\circ} 44' 45''$ , FOR AN ARC DISTANCE OF 59.72 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE NORTHEASTERLY ALONG THE ARC OF SAID CIRCULAR CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 1,859.86 FEET, THROUGH A CENTRAL ANGLE OF  $19^{\circ} 24' 12''$  FOR AN ARC DISTANCE OF 663.71 FEET TO THE POINT OF INTERSECTION WITH THE NORTH LINE OF THE SOUTH  $\frac{1}{2}$  OF SAID TRACT 23; THENCE RUN NORTH  $89^{\circ} 35' 51''$  EAST, ALONG THE NORTH LINE OF THE SOUTH  $\frac{1}{2}$  OF SAID TRACT 23, FOR A DISTANCE OF 17.36 FEET TO THE POINT OF INTERSECTION WITH THE EAST LINE OF SAID TRACT 23; THENCE RUN SOUTH  $02^{\circ} 35' 58''$  EAST ALONG THE EAST LINE OF SAID TRACT 23 FOR 610.43 FEET TO THE NORTH

RIGHT-OF-WAY LINE OF NW 122 STREET (WEST 68 STREET) AS NOW ESTABLISHED; THENCE SOUTH 89° 36' 02" WEST ALONG SAID RIGHT-OF-WAY LINE AND ALONG A LINE PARALLEL TO AND 50 FEET NORTH OF THE SW ¼ OF SAID SECTION 28 FOR 294.27 FEET TO THE POINT OF BEGINNING.

**Section 2: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 3: Penalties.**

Every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 4: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 5: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto. No

development orders, development permits or land uses dependent on this amendment may be issued or commenced before it has become effective.

PASSED and ADOPTED this 22<sup>nd</sup> day of May, 2007.

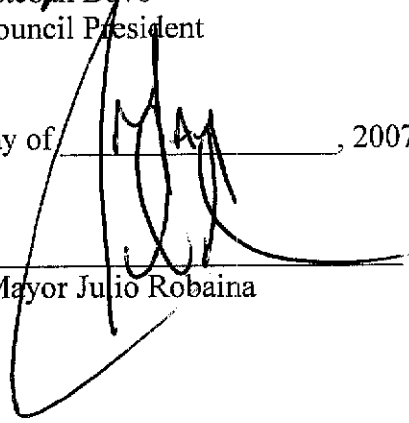
THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

  
\_\_\_\_\_  
Esteban Bovo  
Council President

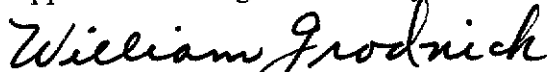
Attest:

Approved on this 23 day of May, 2007.

  
\_\_\_\_\_  
Rafael E. Granado, City Clerk

  
\_\_\_\_\_  
Mayor Julio Robaina

Approved as to legal sufficiency and form:

  
\_\_\_\_\_  
William M. Grodnick, City Attorney

s:\wmg\legis\ord-2007\west68streetconnectorroadlandusesmallscaleamdmnt.doc

Ordinance was adopted by a 6-0-1 vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Hernandez, Miel and Yedra voting "Yes" and Councilmember Gonzalez absent.



CFN 2007R0598702  
OR BK 25703 Pgs 0610 - 6161 (7pgs)  
RECORDED 06/14/2007 14:24:20  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA

Prepared by:  
Felix M. Lasarte, Esq.  
Holland & Knight LLP  
701 Brickell Avenue, Suite 3000  
Miami, Florida 33131  
Telephone: (305) 789-7580

This Space Reserved for Recording

### DECLARATION OF RESTRICTIONS

This Declaration of Restrictions executed this 23<sup>rd</sup> day of May, 2007, by **MR #5, LLC**, a Florida limited liability company, ("Owner").

### WITNESSETH

WHEREAS, the undersigned **MR #5, LLC**, a Florida limited liability company, is the fee simple owner of the following described property ("Property") located in the City of Hialeah, Florida (the "City") and bisected by NW 97<sup>th</sup> Avenue ("Hialeah/Hialeah Gardens Boulevard"):

SEE ATTACHED EXHIBIT "A"

**NOW, THEREFORE**, for good and valuable consideration, the undersigned Owner hereby covenants and agrees as follows:

#### Urban Design Principles and Landscape Buffers

1. The Owner shall implement urban design guidelines adopted and approved by the City of Hialeah for the design and construction of any proposed development on the Property. At the time of zoning the Owner shall present a plan which will provide adequate landscape buffers and a 6 foot prefabricated or CBS decorative wall between the commercial and residential uses. The Owner shall provide a minimum 10' foot landscape buffer running along the entire West property line for the portion of the Property located West of Hialeah – Hialeah Gardens Boulevard and NW 122<sup>nd</sup> Street ("West Property"). The Owner shall also provide a minimum 10' foot landscape buffer running along the entire East property line for the portion of

the property located East of the Hialeah–Hialeah Gardens Boulevard and NW 122<sup>nd</sup> Street ("East Property"). Owner shall provide visual screening along the parking lot and Hialeah-Hialeah Gardens Boulevard so that the view of the parking lot is minimized from Hialeah-Hialeah Gardens Boulevard.

### **Dedication of Public Plaza**

2. Within thirty (30) days of a final non-appealable zoning approval to C-1 (Restricted Retail Commercial) for the development of the Property, the Owner shall convey by warranty deed the Southernmost half acre of the West Property to the City of Hialeah for a public plaza consisting of a fountain and entrance feature to be designed and built by the City of Hialeah. Owner agrees to submit a zoning application to the City of Hialeah within thirty (30) days of a final non-appealable land use approval to Commercial. Owner agrees to proceed with the zoning application and hearing process diligently and to not request a variance for lot coverage or parking.

### **Limitation of Building Height and Square Footage**

3. The East Property shall be developed with a maximum of two (2) buildings with a maximum of two (2) stories (maximum 35 ft.) in height and the frontage of said buildings shall be situated along the Hialeah – Hialeah Gardens Boulevard and the parking for said buildings shall be along the sides and the rear of the buildings. The combined footprint of the buildings on the East Property may only have a maximum of 26,800 sq. ft. contingent upon approval of the site plan by the City of Hialeah. The West Property shall be developed with one building limited to one (1) story (maximum 22 ft.) in height and the frontage of said building shall be situated along the Hialeah – Hialeah Gardens Boulevard and the parking for said building shall be along the sides and the rear of the building and adequately buffered from the street and residential

properties. The combined footprint of the building on the West Property may only have a maximum of 8,600 sq. ft. contingent upon the approval of the site plan by the City of Hialeah.

#### **Prefabricated/CBS WALL**

4. The Owner shall enter into an agreement with Los Palacios Condominium Association, Inc. to provide the Association with entire cost of constructing a CBS or prefabricated wall north of the East Property, said wall to have a length of approximately  $\pm 550$  feet as marked in document attached as Exhibit "B".

#### **Illustrative Site Plan**

5. As part of the land use change process the Owner submitted an illustrative site plan to the City of Hialeah dated 5-17-07 and stamped received 5-18-07 prepared by Ramos-Martinez Architects titled Commercial Site & Civic Plaza ("Illustrative Site Plan"). Owner acknowledges that the Illustrative Site Plan is for illustrative purposes and does not confer any development rights or approvals. The owner acknowledges that during the zoning process and prior to the issuance of a building permit, the City of Hialeah must approve the site plan. In addition, the Owner further acknowledges and understands that neither the Owner nor a third party can rely on the Illustrative Site Plan that was presented to the City of Hialeah for purposes of this land use amendment process.

6. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by

the then owner having fee simple title to the Property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in the Hialeah Charter.

7. The use of the Property shall be in compliance with all ordinances, regulations, codes and charter of the City of Hialeah and applicable state and federal law and laws and regulations of Miami-Dade County, Florida.

[Execution page follows]

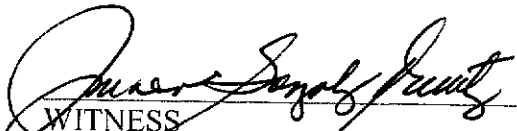


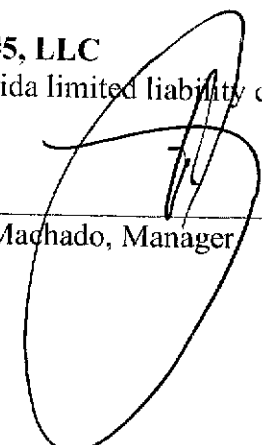
IN WITNESS WHEREOF, we have hereunto set our hands and seals at Miami-Dade

County, this 23 day of May, 2007.

Signed, sealed and delivered in the presence of:

**MR #5, LLC**  
a Florida limited liability company,

  
WITNESS  
Printed Name: Junarda Gonzalez Benitez

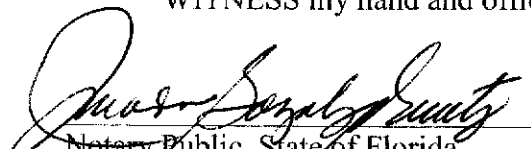
  
Luis Machado, Manager

WITNESS  
Printed Name: Yanet Hernandez

STATE OF FLORIDA                     )  
   )  
COUNTY OF MIAMI-DADE             )

I HEREBY CERTIFY that, on this 23 day of May, 2007, before me, an officer duly authorized in the State of Florida and in the County of Miami-Dade, to take acknowledgments, personally appeared Luis Machado, Manager of **MR #5, LLC**, a Florida limited liability company, to me known to be the person described herein and who executed the foregoing instrument and that he acknowledged before me, under oath, that he executed same.

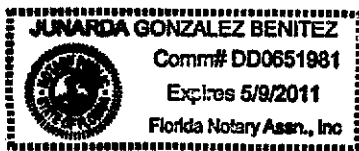
WITNESS my hand and official seal this 23 day of May, 2007.

  
Notary Public, State of Florida  
Junarda Gonzalez Benitez  
(Name of Notary Public: Print, Stamp  
or Type as Commissioned)

(Personally known to me) or  
Produced Identification:

Identification Produced:

☐ DID take an oath  
☐ DID NOT take an oath



## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

That portion of the South 1/2 of Tract 23, of CHAMBERS LAND COMPANY SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 2, at Page 68, of the Public Records of Miami-Dade County, Florida, lying in the SW 1/4 of Section 28, Township 52 South, Range 40 East, Miami-Dade County, Florida:

#### **LESS THE FOLLOWING DESCRIBED PORTION:**

Commence at the Southwest corner of said Section 28, the Standard Plane Rectangular Coordinates for the East Zone of Florida for said point being  $X = 711739.45$ ,  $Y = 563973.12$ ; thence run  $N 89^{\circ}36'02'' E$  Mercator, along the South line of said Section 28 for a distance of 1198.56 feet to the point of intersection with the arc of circular curve concave to the Northwest, the center of which bears  $N 54^{\circ}16'50'' W$  from said point of intersection; thence run Northeasterly, along the arc of said circular curve concave to the Northwest, having a radius of 1859.86 feet, through a central angle of  $06^{\circ}29'28''$ , for an arc distance of 210.70 feet to the point of intersection with the West line of said Tract 23 and the Point of Beginning of the herein described parcel; thence continue Northeasterly along the arc of said circular curve concave to the Northwest, having a radius of 1859.86 feet, through a central angle of  $16^{\circ}03'33''$  for an arc distance of 521.29 feet to the point of intersection with the North line of the South 1/2 of said Tract 23; thence run  $N 89^{\circ}35'51'' E$ , along the North line of the South 1/2 of said Tract 23, for a distance of 102.72 feet to the point of intersection with the arc of a circular curve to the Northwest, the center of which bears  $N 77^{\circ}32'07'' W$  from said point of intersection thence run Southwesterly, along the arc of said circular curve concave to the Northwest, having a radius of 1959.86 feet, through a central angle of  $20^{\circ}47'50''$  for an arc distance of 711.39 feet to the point of intersection with the South line of said Tract 23; thence run  $S 89^{\circ}36'02'' W$ , along the South line of said Tract 23, for a distance of 8.16 feet to the Southwest corner of said Tract 23; thence run  $N 02^{\circ}35'42'' W$  along the West line of said Tract 23, for a distance of 166.99 feet to the Point of Beginning; subject to the existing canal Right-of-Way over the South 40.00 feet thereof.

